

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

MONSANTO COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0621

Decision No. CU-675

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by MONSANTO COMPANY in the amount of \$3,430.67, based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

An officer of the claimant corporation has certified that the claimant was organized in the State of Delaware on April 19, 1933, and that all times between the date of incorporation and presentation of this claim on December 30, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that 99.914% of MONSANTO COMPANY common stock is held by United States nationals.

The record contains copies of claimant's invoices reflecting the sale of goods to various consignees in Cuba, and the charges for freight, shipping and other attendant fees, as follows:

<u>Invoice (EX-)</u>	<u>Invoice Date</u>	<u>Consignee</u>	<u>Amount</u>
15475	3/16/59	Productos Agro Quim. S.A.	\$ 311.05
18618	10/13/59	Fabrica Nacional de Pinturas, S.A.	\$ 134.25
19083	11/13/59	- do -	190.80
19454	12/10/59	- do -	190.80
19211	12/17/59	Drogueria Sarra	\$ 465.99
10375	2/11/60	- do -	971.85
19858	2/12/60	- do -	916.60
18784	10/26/59	Drogueria Taquechel	\$ 249.33
			<u>\$3,430.67</u>

In addition, the record contains copies of letters from The First National City Bank of New York to claimant, referring to notifications by the collecting banks regarding certain collections in local currency, as to which they were awaiting permission from the Cuban exchange control authorities for dollar reimbursement to claimant. Such correspondence indicates that the consignee, Fabrica Nacional de Pinturas, S.A., had effected deposits in local currency on Invoice No. EX-18618 prior to January 19, 1960, on Invoice No. EX-19083 prior to May 12, 1960, and on Invoice No. EX-19454 prior to February 26, 1960; and that the consignee, Drogueria Sarra, had effected deposits in local currency on Invoice No. EX-10375 prior to June 28, 1960, and on Invoice No. EX-19858 on March 10, 1967.

The record further includes statements by the Credit Manager, International Division of Monsanto Company, concerning payment terms and due dates pursuant to, and supported by the subject invoices contained in the record. The foregoing discloses that payment by the consignee, Productos Agro Quim. S.A., on Invoice No. EX-15475 was due September 16, 1959; payment by the consignee, Drogueria Sarra, on Invoice No. EX-19211 was due January 17, 1960; and that payment by the consignee, Drogueria Taquechel, on Invoice No. EX-18784 was due December 26, 1959. Claimant states that it has not received the funds, subject of this claim.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority

to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 501(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on September 29, 1959, the date of publication of Law 568, as to \$311.05 (EX-15475); on December 26, 1959 as to \$249.33 (EX-18784), and on January 17, 1960 as to \$465.99 (EX-19211), the respective maturity dates of the foregoing invoices maturing after September 29, 1959; and on January 20, 1960 as to \$134.25 (EX-18618), on February 27, 1960 as to \$190.80 (EX-19454), on March 11, 1960 as to \$916.60 (EX-19858), on May 13, 1960 as to \$190.80 (EX-19083), and on June 29, 1960 as to \$971.85 (EX-10375), the dates after the collections were acknowledged by the respective collecting banks.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the

rate of 6% per annum from the date on which the loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

<u>Date of Loss</u>	<u>Amount</u>
September 29, 1959	\$ 311.05
December 26, 1959	249.33
January 17, 1960	465.99
January 20, 1960	134.25
February 27, 1960	190.80
March 11, 1960	916.60
May 13, 1960	190.80
June 29, 1960	971.85

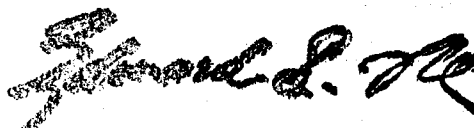
CERTIFICATION OF LOSS

The Commission certifies that MONSANTO COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Thousand Four Hundred Thirty Dollars and Sixty-Seven Cents (\$3,430.67) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

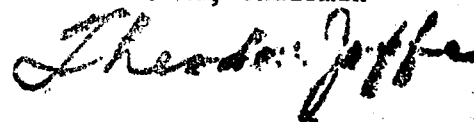
Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

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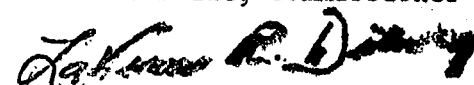
This is a true and correct copy of the decision
of the Commission which was entered as the Final
Decision on DEC 27 1967



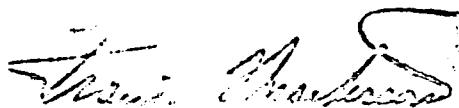
Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner



Clerk of the Commission

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)